United Nations S/2008/767

Security Council

Distr.: General
5 December 2008

Original: English

Letter dated 5 December 2008 from the Secretary-General addressed to the President of the Security Council

I attach for your information a letter dated 26 November 2008 from Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia (see annex).

President Robinson seeks an extension of the terms of Security Council resolution 1800 (2008), adopted on 20 February 2008, so that the Tribunal may be authorized to have more than the statutory maximum of 12 ad litem judges beyond 31 December 2008. Under resolution 1800 (2008) the Tribunal is required to return to a maximum of 12 ad litem judges by 31 December 2008.

I would be grateful if you could bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

08-64007 (E) 101208

Annex

Letter dated 26 November 2008 from the President of the International Tribunal for the Former Yugoslavia to the Secretary-General

I refer to the letter of President Pocar of 14 January 2008 (S/2008/44, annex), which was circulated to the members of the Security Council. That letter clarified an earlier letter from President Pocar dated 12 December 2007 (S/2007/788, annex), which was also circulated to members of the Security Council. I further refer to the letter of President Pocar of 4 February 2008 (S/2008/99, annex), which was circulated to the members of the Security Council. In those letters, President Pocar had the honour of referring to the 116th plenary meeting of the fifty-ninth session of the General Assembly, on 24 August 2005, during which 27 ad litem judges of the International Tribunal for the Former Yugoslavia were elected for a term of four years. By virtue of that resolution, and pursuant to Security Council resolution 1329 (2000), President Pocar advised that he would be requesting the appointment of additional ad litem judges in order to allow the Tribunal to start two new trials.

President Pocar advised that these additional appointments were necessary for the International Tribunal to achieve its objectives within the "completion strategy" and to ensure the right to a fair and expeditious trial, but that they would also amount to a temporary increase of the number of ad litem judges from the maximum of 12 ad litems at any one time, as established under article 12(1) of the statute of the Tribunal. President Pocar further advised that the number of ad litem judges would most likely return to the statutory maximum of 12 by September 2008, when the close of the Tribunal's first multi-accused case, *Milutinović et al.*, to which three ad litem judges are currently assigned, was scheduled to be completed. In total, he sought authorization to appoint on a temporary basis a maximum of 16 ad litem judges.

At the time of making the request, President Pocar advised that while he could reasonably predict that the number of ad litems would return to the statutory maximum of 12 by September 2008, with the issuing of the *Milutinović et al.* judgment, there were a number of unforeseen factors that could intervene to delay a trial, which are not reasonably within the Tribunal's control. Upon that basis, he considered it would be prudent not to specify a precise time at which the Tribunal will return to its statutory maximum of 12 ad litem judges.

As a result of the request of President Pocar, the Security Council adopted resolution 1800 (2008), authorizing the appointment,

> "... within existing resources, additional ad litem Judges upon the request of the President of the International Tribunal in order to conduct additional trials, notwithstanding the fact that the total number of ad litem Judges appointed to the Chambers will from time to time temporarily exceed the maximum of twelve provided for in article 12(1) of the statute of the International Tribunal, to a maximum of sixteen at any one time, returning to a maximum of twelve by 31 December 2008".

Currently, the International Tribunal has a total of 14 ad litem judges assigned to cases and due to unforeseen factors related to the complexity of the deliberations in the case of *Milutinović et al.*, to which three ad litem judges are assigned, the

delivery of judgment in that case has been delayed. On the basis of consultations with the Presiding judge, Judge Bonomy, it is currently anticipated that judgment in that case will not be rendered before 12 February 2009. Accordingly, it has become necessary to seek an extension of the terms of Security Council resolution 1800 (2008) as the International Tribunal will continue to have a total above the statutory limit of ad litem judges until the delivery of the judgment in that case.

While it is regrettable that the anticipated date for delivery of the judgment has not been met, it needs to be borne in mind that estimation of the length of a trial, including the delivery of judgment, is not an easy matter. I ask you to take into account that this is the Tribunal's first multi-accused case, with as many as six accused persons. My consultations with Judge Bonomy indicate that the delay arises from the difficulty of issues to be resolved and the concern that the current hectic pace of the deliberations will impact on the fairness of the trial. I note that while the completion strategy requires the Tribunal to complete its cases as expeditiously as possible, it does not anticipate that principles of fair trial and the rights of the accused should therefore be sacrificed.

The *Milutinović et al.*, case is, as I have said, a case against six accused and trial proceedings took two years to complete. During that period, the Trial Chamber heard no less than 231 witnesses. This evidence constitutes a caseload in excess of 26,700 pages. There is, in addition, a multitude of pages of evidence of witnesses' statements and evidence received in written form via rule 92 *bis*, *ter* and *quater*, which form part of the record. There are also literally thousands of exhibits which have been received in evidence, all for careful examination and consideration by the Trial Chamber in the process of deliberations.

Additionally, in order to start an eighth trial in December 2008, and in accordance with the terms of article 13 *ter*, paragraph 2, of the statute of the International Tribunal, and having duly considered the criteria established by that provision, I am requesting the appointment of ad litem judge Melville Baird (Trinidad and Tobago) to serve on the trial of case No. IT-05-87/1-PT, *Prosecutor v. Đorđević*. The trial is expected to commence on 15 December 2008 and is expected to be completed within 12 months. I would therefore appreciate your appointment of ad litem Judge Baird to case No. IT-05-87/1-PT as of 1 December 2008. This would bring the total of ad litem judges to 15 until 12 February 2009. At that time, with the delivery of the judgment in the *Milutinović et al.* case, the number of ad litem judges would return to the statutory limit of 12 ad litem judges.

In making this request for the assignment of ad litem Judge Baird, I refer to your letters of 1 October 2008 to ad litem Judge Lattanzi and to ad litem Judge Picard, in which you appointed both of those judges to case No. IT-05-87/1-PT, *Prosecutor v. Đorđević*, effective immediately. Due to the existing trial commitments of both Judge Lattanzi and Judge Picard, and the immediate availability of two permanent judges, Judge Parker and Judge Flügge, to sit on the case of *Prosecutor v. Đorđević* with ad litem Judge Baird, these appointments are not required, and I request that they be withdrawn.

I would be grateful if this matter could be brought to the attention of the Security Council as a matter of urgency.

(*Signed*) Patrick **Robinson**
President